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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/455,932

12/07/1999

TETSUYA OKANO

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5754

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10/18/2006

STAAS & HALSEY LLP

SUITE 700

1201 NEW YORK AVENUE, N.W.

WASHINGTON, DC 20005

EXAMINER

STRANGE, AARON N

ART UNIT

PAPER NUMBER

2153

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/455,932

Applicant(s)

OKANO ET AL.

Examiner

Aaron Strange

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 6-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

3. With regard to claim 1, the limitations "a selecting unit which selects one server terminal" (Line 8) is not described in the specification. The specification states that the "load measuring unit" selects the server terminal, not a selecting unit in the relaying apparatus. (Page 17, Lines 13-25 of present application). Applicant also confirms this in the remarks filed 7/24/06 (Page 8).

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1,4,6,7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. With regard to claim 1, the preamble states that the claim is directed to "A relaying apparatus", but the body of the claim recites "route load measuring units" that are located in, or in the vicinity of, server terminals. It is unclear how measuring units located in multiple server terminals may be part of a single "relaying apparatus". Claims 4 and 6-8 contain similar limitations and are rejected under the same rationale.

7. With further regard to claim 1, the limitations "wherein said route load measuring units each measures ... a round-trip time, a maximum segment size, and an adjustable congestion-evading window size for a server terminal utilizing TCP ... and where UDP is utilized, a number of simulated sessions ..." are unclear.

The limitation "where UDP is utilized..." is unclear because the claim contains an active recitation regarding use of a parameter for a server utilizing TCP. It is unclear if one server utilizes both TCP and UDP, there are two different servers, or if the TCP and UDP servers are intended to be mutually exclusive.

Claims 4 and 6-8 contain similar limitations and are rejected under the same rationale.

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8. With further regard to claim 1, the limitations "a selecting unit which selects one server terminal ... based on the load" (Lines 8-10) and "a number of simulated sessions ... is used to select a server terminal" (Lines 30-31) are unclear. It is unclear if one or both criteria are used to select a server terminal. Claims 4 and 6-8 contain similar limitations and are rejected under the same rationale.

9. With regard to claims 7 and 8, the limitation "wherein one of the path load measuring devices is selected as a primary destination" is unclear. That limitation appears in the portion of the claim is directed to the "path load measuring devices" themselves, which do not self select. There are no elements in the claim which perform the selecting, so the limitation does not appear to impart any patentable weight to the claim, making it unclear what Applicant intends to incorporate with the limitation.

Allowable Subject Matter

10. As best understood by the Examiner, the present claims are directed to a system containing a plurality of clients, servers, route load measuring units, and at least one relaying apparatus. The relaying apparatus measures and stores a load based on various parameters, depending on the type of transport protocol used by the server. The relaying apparatus will select a path load measuring device as a primary destination and the path load measuring device will select a server as a secondary destination.

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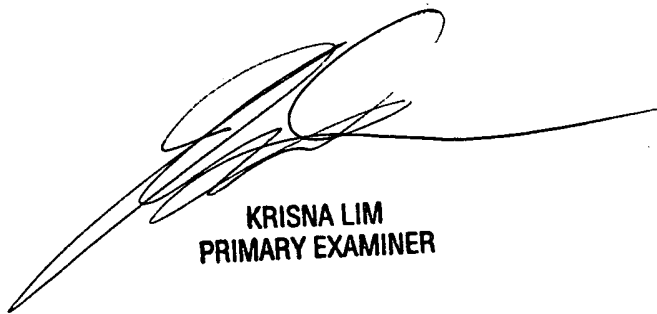
11. It appears that the claimed subject matter may be allowable if rewritten to overcome the rejections presented under 35 U.S.C. 112 and accompanied by sufficient argument/explanation to clarify the claims and distinguish from the prior art of record.

12. In the interest of expedited prosecution, the Examiner would be willing to discuss potential amendments in an interview. Applicant is encouraged to contact the Examiner to schedule an interview if Applicant feels that prosecution could be accelerated.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



KRISNA LIM
PRIMARY EXAMINER

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AS 10/16/06